

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA

vs.

AMBER MURPHY

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NO. 3:14-CR-00089
REEVES/GUYTON

MEMORANDUM AND ORDER

By judgment entered July 19, 2016, this court sentenced defendant to a term of 60 months imprisonment following her guilty plea to conspiracy to manufacture at least 5 but less than 50 grams of methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1) and 841(b)(1)(B). Defendant did not appeal her conviction or sentence. Now before the court is defendant's pro se motion for sentence reduction [R. 529].

Although styled as "2255 Minor Role Motion Amendment 794," defendant in fact seeks a sentence reduction in light of Amendment 794, thus, the court will construe her filing as a motion brought pursuant to 18 U.S.C. § 3582(c)(2), rather than as a motion to vacate under 28 U.S.C. § 2255.

Amendment 794 became effective November 1, 2015, and was incorporated into the Guidelines. Defendant was sentenced to 60 months imprisonment on July 17, 2016, pursuant to the 2015 Guidelines, which incorporated Amendment 794. No motion was made by defendant asking for a minor role adjustment at sentencing, and the time for doing

so has expired. Defendant's conviction became final upon the expiration of the 14-day period for filing a notice of appeal under Federal Rule of Appellate Procedure 4(b)(1)(A). Amendment 794 does not apply to convictions that have become final.

Defendant's reliance on *United States v. Quintero-Leyva* is misplaced. In *Quintero-Leyva*, the United States Court of Appeals for the Ninth Circuit held that Amendment 794 applies retroactively on *direct appeal*. The case did not hold, nor has any other case held, that relief under the amendment is available once a judgment becomes final. *See Johnson v. United States*, 2016 WL 6084018 (S.D.Ohio Oct. 17, 2016).

Accordingly, defendant's pro se motion for sentence reduction [R. 529] is **DENIED.**

IT IS SO ORDERED.

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UNITED STATES DISTRICT JUDGE